

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4856

To improve the Nation's health care by creating a comprehensive medical malpractice prevention program through the creation of independent, publicly accountable State medical boards and more stringent licensing and discipline procedures; to empower health consumers by mandating reporting of certain information regarding health care providers and professionals and by enhancing informed individual choice regarding health care services by providing certain information to consumers; and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 28, 1994

Mr. NADLER introduced the following bill; which was referred to the  
Committee on Energy and Commerce

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## A BILL

To improve the Nation's health care by creating a comprehensive medical malpractice prevention program through the creation of independent, publicly accountable State medical boards and more stringent licensing and discipline procedures; to empower health consumers by mandating reporting of certain information regarding health care providers and professionals and by enhancing informed individual choice regarding health care services by providing certain information to consumers; and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
 2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
 5       “Patient Safety Act of 1994”.

6       (b) TABLE OF CONTENTS.—The table of contents for  
 7       this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—GENERAL PROVISIONS

Sec. 101. Findings and purpose.

Sec. 102. Preemption.

Sec. 103. Effective date.

Sec. 104. Definitions.

TITLE II—CREATION OF INDEPENDENT AND EFFECTIVE STATE  
 MEDICAL BOARDS

Sec. 201. Requirements for State medical boards.

Sec. 202. Guidelines for investigations.

Sec. 203. Disciplinary hearings.

Sec. 204. Disciplinary actions.

Sec. 205. Disclosure of disciplinary actions.

Sec. 206. Federal assumption of responsibilities.

TITLE III—REQUIREMENTS FOR HEALTH CARE PROFESSIONALS  
 AND PROVIDERS

Sec. 301. Renewal of license required every 2 years.

Sec. 302. Reporting requirements.

Sec. 303. Reexamination required after 6 years.

Sec. 304. Audits.

Sec. 305. Mandatory medical malpractice insurance.

Sec. 306. Study of medical negligence.

TITLE IV—PUBLIC ACCESS TO PRACTITIONER DATA BANK

Sec. 401. Providing public access to the national practitioner data bank.

8       **TITLE I—GENERAL PROVISIONS**

9       **SEC. 101. FINDINGS AND PURPOSE.**

10       (a) FINDINGS.—The Congress finds and declares  
 11       that—

1           (1) there are a large number of avoidable  
2       deaths and injuries in the Nation caused by medical  
3       negligence and malpractice;

4           (2) the identity of health care professionals re-  
5       sponsible for medical negligence should be revealed  
6       to the public and they should be subject to discipline  
7       by the appropriate State medical boards;

8           (3) despite the large number of consumers in-  
9       jured by medical malpractice each year, fewer than  
10       $\frac{1}{2}$  of 1 percent of the Nation's health care profes-  
11      sionals face any serious State sanctions each year;

12          (4) the purpose of State medical boards is to  
13      protect the public from the unprofessional, improper  
14      and incompetent practice of medicine;

15          (5) most State medical boards are not ade-  
16      quately disciplining health care professionals and  
17      when they do, most of their efforts focus on offenses  
18      other than medical negligence, with revocations or  
19      suspensions of licenses rarely occurring;

20          (6) among the reasons why the State medical  
21      boards are unwilling or unable to identify and dis-  
22      cipline negligent health care professions are that the  
23      boards lack adequate funding, staffing, investigative  
24      and disciplinary powers and because the boards are

1 dominated by health care professionals who are re-  
2 luctant to discipline their colleagues;

3 (7) medical malpractice lawsuits are a nec-  
4 essary adjunct to State disciplinary proceedings, but  
5 they are not a substitute for them, since it is govern-  
6 ment, through its licensure of health care profes-  
7 sionals, that must ensure that high-quality health  
8 care is delivered to the public;

9 (8) health care consumers have very little infor-  
10 mation available to them regarding the quality of  
11 their health care providers and professionals;

12 (9) in order to make informed choices between  
13 health care providers and professionals, consumers  
14 need access to more information about their health  
15 care providers and professionals, including discipli-  
16 nary and malpractice records; and

17 (10) more and better information to health care  
18 consumers about their health care providers and pro-  
19 fessionals and more and better discipline of incom-  
20 petent and negligent health care professionals will  
21 alleviate the medical malpractice crisis and improve  
22 the quality of health care in the Nation by helping  
23 consumers to choose between health care providers  
24 and professionals and by removing the licenses of

1 those health care professionals who are a danger to  
2 the public health and welfare.

3 (b) PURPOSE.—It is the purpose of this Act—

4 (1) to create a national program of medical  
5 malpractice prevention by requiring State medical  
6 boards to be controlled by members of the public  
7 and not of the profession being monitored;

8 (2) to ensure that State medical boards are  
9 more effective in identifying and disciplining incom-  
10 petent, unethical, and negligent health care profes-  
11 sionals by ensuring that such boards are adequately  
12 staffed and funded to fulfill their purpose of permit-  
13 ting only qualified and fit individuals to practice  
14 medicine;

15 (3) to provide ready access to consumers of in-  
16 formation regarding their health care providers and  
17 professionals; and

18 (4) to ensure that all health care professionals  
19 remain abreast of new information regarding the ef-  
20 ficacy of medical tests and procedures and to assist  
21 in the identification of incompetent health care pro-  
22 fessionals, thereby reducing the incidence of the  
23 practice of unnecessary medicine and the incidence  
24 of preventable injuries to patients.

1 **SEC. 102. PREEMPTION.**

2       The provisions of this Act shall preempt State law  
3 only to the extent that the Secretary finds that State law  
4 does not protect the health and safety of patients in the  
5 State at least as effectively as the provisions of this Act.

6 **SEC. 103. DEFINITIONS.**

7       As used in this Act:

8           (1) HEALTH CARE PROVIDER.—The term  
9       “health care provider” means any organization or  
10      institution that is engaged in the delivery of health  
11      care services in a State and that is required by the  
12      laws or regulations of the State to be licensed or cer-  
13      tified by the State to engage in the delivery of such  
14      services in the State.

15          (2) HEALTH CARE PROFESSIONAL OR LI-  
16      CENSEE.—The terms “health care professional” and  
17      “licensee” mean an individual who provides health  
18      care services in a State and who is required by the  
19      laws or regulations of the State to be licensed or cer-  
20      tified by the State to provide such services in the  
21      State.

22          (3) INJURY.—The term “injury” means any ill-  
23      ness, disease, or other harm that is the subject of  
24      a quality of care complaint or a medical malpractice  
25      claim.

1           (4) QUALITY OF CARE COMPLAINT.—The term  
2           “quality of health care complaint” means a claim in  
3           which the claimant alleges to a State medical board  
4           or any entity of the Federal Government which sanc-  
5           tions health care professionals that injury was  
6           caused by the provision of (or the failure to provide)  
7           health care services.

8           (5) MEDICAL MALPRACTICE ACTION.—The term  
9           “medical malpractice action” means a civil action  
10          (other than an action in which the plaintiff’s sole al-  
11          legation is an allegation of an intentional tort)  
12          brought in a State or Federal court against a health  
13          care provider or health care professional (regardless  
14          of the theory of liability on which the action is  
15          based) in which the plaintiff alleges a medical mal-  
16          practice claim.

17          (6) MEDICAL MALPRACTICE CLAIM.—The term  
18          “medical malpractice claim” means a claim in which  
19          an individual alleges that injury was caused by the  
20          provision of (or the failure to provide) health care  
21          services.

22          (7) SECRETARY.—The term “Secretary” means  
23          the Secretary of Health and Human Services.

24          (8) STATE.—The term “State” means the 50  
25          States, the District of Columbia, Puerto Rico, the

1 Virgin Islands, Guam, American Samoa, and the  
2 Northern Mariana Islands.

3 (9) STATE MEDICAL BOARD.—The term “State  
4 medical board” means the entity (as determined by  
5 a State) with responsibility for the disciplining or li-  
6 censing of health care professionals, and includes a  
7 subdivision of such an entity.

8 **SEC. 104. EFFECTIVE DATE.**

9 This Act shall take effect January 1, 1996.

10 **TITLE II—CREATION OF INDE-**  
11 **PENDENT AND EFFECTIVE**  
12 **STATE MEDICAL BOARDS**

13 **SEC. 201. REQUIREMENTS FOR STATE MEDICAL BOARDS.**

14 (a) IN GENERAL.—Each State medical board shall  
15 meet the following requirements:

16 (1) COMPOSITION.—Not less than 51 percent of  
17 the members of a State medical board shall be pub-  
18 lic members with no current or previous significant  
19 business, professional, or pecuniary connection with  
20 a health care professional, medical education facility,  
21 or health care provider (other than as a patient or  
22 potential patient), in accordance with regulations of  
23 the Secretary. The number of members of the board  
24 shall be based on the State’s physician population  
25 (as prescribed by the Secretary), except that in no

1 event may a board have fewer than 12 members.  
2 The Chairperson and Vice-Chairperson of the board  
3 shall be public members.

4 (2) TERM OF SERVICE.—Each member of the  
5 board shall serve a term of 3 years.

6 (3) CONSUMER ASSISTANCE UNIT.—

7 (A) IN GENERAL.—A special consumer as-  
8 sistance unit shall be created within the board  
9 to deal directly with complainants. The staff of  
10 the unit shall consist of consumer protection of-  
11 ficers with medical or social work background.

12 (B) TOLL-FREE HOTLINE.—The consumer  
13 assistance unit shall operate a toll-free phone  
14 number through which the unit—

15 (i) shall advise the public of any hear-  
16 ing pending pursuant to formal charges  
17 filed against a health care professional,  
18 any summary suspension or other discipli-  
19 nary action taken by the board against a  
20 health care professional, and the charges  
21 (excluding patient identifying information)  
22 against the professional on which such  
23 hearing or action is based (in a manner  
24 that does not disclose the identity of an in-  
25 dividual patient);

1           (ii) accept consumer complaints about  
2           suspected health care professional mis-  
3           conduct (other than complaints over billing  
4           disputes); and

5           (iii) provide information to consumers  
6           on health care professionals, including the  
7           date the professional was first licensed, the  
8           registration status of the professional, the  
9           professional's hospital affiliations, and the  
10          names of other States in which the profes-  
11          sional holds a license.

12          (C) POSTING REQUIREMENT.—The toll-  
13          free phone number described in subparagraph  
14          (B) shall be conspicuously posted by all health  
15          care providers and professionals in the State  
16          and shall be added to any printed materials dis-  
17          tributed to the public by the board, together  
18          with a clear statement that the number is not  
19          to be used for filing complaints over billing dis-  
20          putes.

21          (4) DISCLOSURE OF INFORMATION TO NA-  
22          TIONAL PRACTITIONER DATA BANK.—Each State  
23          medical board shall report the information received  
24          under title III to the Secretary in accordance with

1 section 424 of the Health Care Quality Improvement  
2 Act of 1986.

3 (b) ADDITIONAL STATE REQUIREMENTS.—

4 (1) OVERSIGHT PANEL.—As prescribed by the  
5 Secretary, each State shall establish an oversight  
6 panel to independently assess and audit the State  
7 medical board process and hear appeals from com-  
8 plainants whose claims have been dismissed by State  
9 medical boards. The panel shall consist of 7 mem-  
10 bers appointed by the Governor and shall include not  
11 more than 2 physicians.

12 (2) FUNDING.—Each State shall ensure that  
13 the State medical boards are fully supported by the  
14 revenues generated from their activities, including  
15 fees, charges, and reimbursed costs. The health care  
16 professional licensing fees charged in the State may  
17 not be less than \$500 annually. All revenues gen-  
18 erated by this fee shall be used exclusively for State  
19 medical board activities.

20 **SEC. 202. GUIDELINES FOR INVESTIGATIONS.**

21 (a) MANDATORY INVESTIGATION OF CERTAIN RE-  
22 PORTS AND NATIONAL PRACTITIONER DATA BANK IN-  
23 FORMATION.—

24 (1) IN GENERAL.—Upon receipt of reports pur-  
25 suant to section 302 of the Health Care Quality Im-

1       provement Act, and upon querying the National  
2       Practitioner Data Bank while performing its reg-  
3       istration or reregistration functions, the State medi-  
4       cal board shall investigate any evidence which ap-  
5       pears to show that a health care professional is or  
6       may be medically incompetent, has engaged in un-  
7       professional conduct, or is mentally or physically un-  
8       able to engage safely in the performance of health  
9       care services.

10       (2) SPECIFIC GROUNDS FOR INVESTIGA-  
11       TIONS.—In addition to other information the report-  
12       ing of which may constitute grounds for an inves-  
13       tigation, receipt of reports disclosing the following  
14       information may be grounds for instituting an inves-  
15       tigation with respect to a health care professional:

16               (A) Quality of care complaints or medical  
17               malpractice actions brought against the health  
18               care professional.

19               (B) Payments in settlement (or partial set-  
20               tlement) of, or in satisfaction of a judgment or  
21               arbitration award in, a medical malpractice ac-  
22               tion or claim.

23               (C) Professional liability insurance can-  
24               cellations for reasons related to liability claims

1 or actions brought against the health care pro-  
2 fessional.

3 (D) Sanctions or disciplinary actions taken  
4 against the health care professional by another  
5 State or jurisdiction, a peer review body, a  
6 health care provider, or a medical or profes-  
7 sional association or society.

8 (E) The failure of the professional to meet  
9 the requirements of section 302(b) (relating to  
10 annual reports to health care consumers).

11 (F) The filing of a report by a medical ex-  
12 aminer under section 302(c) indicating that a  
13 death may have been the result of the profes-  
14 sional's negligence or incompetence.

15 (G) The failure of the professional to meet  
16 the requirements of section 401(b) (relating to  
17 providing information to patients on rights es-  
18 tablished under title IV).

19 (b) INVESTIGATORY POWERS AND PROCEDURES.—

20 (1) IN GENERAL.—The State shall ensure that  
21 the State medical boards are given sufficient powers  
22 and follow certain procedural guidelines sufficient to  
23 ensure efficient and effective performance of their  
24 investigatory duties.

1           (2) STAFFING.—The Secretary shall establish  
2       guidelines for the duties of and qualifications for  
3       staff positions of State medical boards, addressing  
4       the appropriate separation of investigatory and adjudicatory  
5       functions. The Board’s staff may include,  
6       but need not be limited to—

7           (A) an executive director,

8           (B) 1 or more hearing officers trained to  
9       conduct hearings (whose decision shall be reviewed,  
10      approved, modified, or disapproved by  
11      the Board), and

12          (C) 1 or more investigators trained in the  
13      investigation of medical and related health care  
14      practice.

15          (3) INVESTIGATIVE POWERS.—The State shall  
16      ensure that the State medical boards have at least  
17      the following investigative powers:

18           (A) The power to subpoena documents and  
19      individuals possessing information relevant to  
20      investigations:

21           (B) The power to swear in witnesses.

22           (C) The power to require professional competency  
23      examinations upon reasonable suspicion  
24      of incompetence. For purposes of this clause, a

1 single act of alleged negligence may serve as a  
2 reasonable suspicion of incompetence.

3 (D) To the extent necessary to complete an  
4 investigation, the power to conduct an unan-  
5 nounced on-site review of the licensee's entire  
6 practice, including but not limited to a com-  
7 prehensive review of patient records of the li-  
8 censee and such office records of the licensee as  
9 are relevant to the investigation, and a review  
10 of procedures and safeguards in the offices.

11 (E) The power to obtain the involuntary,  
12 temporary, and summary suspension of a li-  
13 censee from practice who poses an imminent  
14 threat to patient health.

15 (F) The power to order immediate super-  
16 vision of certain procedures by another licensee.

17 (G) The power to require the licensee to  
18 submit to 1 or more physical or mental exami-  
19 nations.

20 (H) The power to order drug testing of the  
21 licensee.

22 (4) PROCEDURAL GUIDELINES.—The State  
23 shall ensure that State medical boards adhere to the  
24 following procedures:

1 (A) All investigations of cases alleging pa-  
2 tient harm and conducted pursuant to this sec-  
3 tion shall be completed within 90 days of the  
4 receipt of the report initiating the investigation,  
5 except that such deadline may be extended for  
6 reasonable cause.

7 (B) In conducting an investigation of a li-  
8 censee, the State medical board shall, at no  
9 cost, query the National Practitioner Data  
10 Bank for all available information relating to  
11 the professional competence and conduct of the  
12 licensee.

13 **SEC. 203. DISCIPLINARY HEARINGS.**

14 (a) GROUND FOR HEARING.—If following an inves-  
15 tigation, the State medical board finds there is probable  
16 cause to believe that a health care professional has pro-  
17 vided substandard treatment, has engaged in unpro-  
18 fessional conduct, is medically incompetent or is mentally  
19 or physically unable to engage safely in the performance  
20 of health care services, a disciplinary hearing shall be con-  
21 ducted in accordance with procedures established by State  
22 law (consistent with the requirements of subsection (b)).

23 (b) REQUIREMENTS FOR HEARING.—

24 (1) TIMING.—A disciplinary hearing with re-  
25 spect to a health care professional shall be held

1 promptly after the conclusion of the State medical  
2 board's investigation of the health care professional,  
3 and a decision shall be rendered not later than 60  
4 days following completion of the hearing (except that  
5 such deadline may be extended for reasonable  
6 cause).

7 (2) POWERS OF BOARD.—In conducting a dis-  
8 ciplinary hearing with respect to a health care pro-  
9 fessional, the State medical board may subpoena  
10 documents and individuals possessing relevant infor-  
11 mation and may swear in witnesses.

12 (3) EVIDENTIARY STANDARD.—The decision  
13 under a disciplinary hearing shall be based on the  
14 preponderance of the evidence.

15 (4) DISSEMINATION OF INFORMATION.—The  
16 State medical board shall make summaries of ongo-  
17 ing disciplinary proceedings available to the public,  
18 except that such summaries shall not include any in-  
19 formation that may disclose the identity of, or iden-  
20 tifying information on, an individual patient.

21 **SEC. 204. DISCIPLINARY ACTIONS.**

22 (a) PENALTIES DESCRIBED.—The penalties that may  
23 be imposed on a health care professional by a State medi-  
24 cal board are as follows:

25 (1) Revocation or suspension of a license.

1           (2) Restriction or limitation of the extent,  
2       scope, or type of practice, if such limitation is con-  
3       ducted under the presence and guidance of a super-  
4       vising licensee.

5           (3) Imposition of an administrative fine of at  
6       least \$1,000 for each count or separate offense.

7           (4) Issuance of a warning or reprimand.

8           (5) Probation with or without conditions (such  
9       as submission to treatment, attendance at continu-  
10      ing education courses, reexamination, or practice  
11      only under the presence and guidance of a super-  
12      vising licensee).

13          (6) Assessment of the reasonable costs of inves-  
14      tigation, hearing, and review, and the costs of proba-  
15      tion supervision.

16      (b) SUMMARY LICENSE SUSPENSION.—

17          (1) IN GENERAL.—The State medical board  
18      may suspend the license of a health care professional  
19      without the opportunity for a prior hearing if the  
20      board finds that at least one of the following condi-  
21      tions exists:

22              (A) The individual's continued practice  
23          creates a clear and present danger to public  
24          health.

1 (B) The individual has been found or has  
2 pleaded guilty to a felony charge within the  
3 State or in another jurisdiction relating to the  
4 individual's professional activities.

5 (C) The individual's license has been sus-  
6 pended or revoked in another jurisdiction, with-  
7 out regard to whether such suspension or rev-  
8 ocation has occurred or is pending.

9 (2) TIMING FOR FORMAL HEARING.—After the  
10 summary suspension of a license pursuant to para-  
11 graph (1), the State medical board shall hold a for-  
12 mal hearing as soon as practicable following the  
13 summary suspension (but in no event later than 90  
14 days after such summary suspension).

15 (c) NOTIFICATION OF PATIENTS.—Any health care  
16 professional subject to probation or a restriction or limita-  
17 tion on the scope of practice shall notify patients of such  
18 probation, restriction, or limitation.

19 (d) TERMINATION OF SANCTION.—

20 (1) NO STAY OF SUSPENSION OR REVOCATION  
21 DURING APPEAL.—Under no circumstances may a  
22 board stay the suspension or revocation of a license  
23 pending an appeal, and the licensee may not resume  
24 practice unless and until the penalty is overturned  
25 upon such appeal.

1           (2) MINIMUM PERIOD OF REVOCATION.—After  
2       revocation of a license by a State medical board, a  
3       health care professional may not petition for rein-  
4       statement for at least a 3-year period.

5           (3) IMPOSITION OF CONDITIONS.—The State  
6       medical board may condition the restoration of a  
7       suspended or revoked license or the removal of limi-  
8       tations on a license upon the health care professional  
9       obtaining minimum results on one or more physical,  
10      mental, or professional competency examinations.

11 **SEC. 205. DISCLOSURE OF DISCIPLINARY ACTIONS.**

12       (a) IN GENERAL.—

13           (1) PUBLICATION OF NEWSLETTER.—State  
14      medical boards shall report regularly (but not less  
15      often than monthly) in a published newsletter all  
16      final disciplinary actions taken and formal charges  
17      filed after State medical board investigation of a  
18      complaint, including the names of the professionals  
19      involved, a description of the acts or omissions sub-  
20      ject to discipline or listed as the formal charge and  
21      the nature of the actions taken.

22           (2) ANNUAL REPORTS.—State medical boards  
23      shall publish annual reports compiling statistics on  
24      disciplinary actions taken during a year (in accord-  
25      ance with criteria established by the Secretary).

1 (b) DISSEMINATION OF DISCIPLINARY ACTION RE-  
2 PORTS.—The reports published under subsection (a) shall  
3 be widely disseminated to the public (free of charge) by  
4 advertising their availability through the news media, and  
5 shall be forwarded to—

6 (1) health care providers in the State;

7 (2) the Secretary;

8 (3) the Medicare peer review organization serv-  
9 ing geographic areas in the State under title XVIII  
10 of the Social Security Act;

11 (4) entities offering medical malpractice insur-  
12 ance within the State; and

13 (5) Federal depository libraries.

14 **SEC. 206. FEDERAL ASSUMPTION OF RESPONSIBILITIES.**

15 (a) DETERMINATION OF STATE COMPLIANCE.—Not  
16 later than October 1 of each year (beginning with 1995),  
17 the Secretary shall determine whether a State's medical  
18 board meets the requirements of this title and title III for  
19 the following calendar year.

20 (b) FEDERAL ASSUMPTION OF RESPONSIBILITY.—If  
21 the Secretary determines that a State medical board does  
22 not meet the requirements of this title and title III for  
23 a year—

24 (1) the Secretary shall carry out all functions of  
25 the board in the State during the year; and

1           (2) the State shall reimburse the Secretary (at  
2       such time and in such manner as the Secretary may  
3       require) for the costs incurred by the Secretary dur-  
4       ing the year as a result of the application of para-  
5       graph (1).

6       **TITLE III—REQUIREMENTS FOR**  
7       **HEALTH CARE PROFES-**  
8       **SIONALS AND PROVIDERS**

9       **SEC. 301. RENEWAL OF LICENSE REQUIRED EVERY 2**  
10       **YEARS.**

11       (a) IN GENERAL.—Every 2 years, each health care  
12       professional and health care provider shall demonstrate to  
13       the satisfaction of the State medical board the profes-  
14       sional's continuing qualification for medical licensing.

15       (b) SIGNATURE REQUIRED.—An application for re-  
16       registration of a license submitted under this section shall  
17       be signed by the applicant and notarized, and shall contain  
18       a statement of the applicant affirming (under penalty of  
19       perjury) that the information provided is true to the best  
20       of the applicant's knowledge.

21       **SEC. 302. REPORTING REQUIREMENTS.**

22       (a) RENEWAL OF LICENSE.—

23           (1) IN GENERAL.—As a condition of the re-  
24       newal of a license under section 301, at the time of  
25       reregistration a health care professional or health

1 care provider shall report (on a form prescribed and  
2 promulgated by the Secretary) the following infor-  
3 mation:

4 (A) Any pending investigation or prelimi-  
5 nary or final action taken against the licensee  
6 by—

7 (i) any jurisdiction or authority  
8 (whether in the United States or a foreign  
9 nation) which licenses or authorizes the  
10 practice of medicine;

11 (ii) any peer review body;

12 (iii) any health care provider;

13 (iv) any professional medical society  
14 or association;

15 (v) any law enforcement agency;

16 (vi) any court; or

17 (vii) any governmental agency,

18 for acts or conduct which may constitute  
19 grounds for disciplinary action described in sec-  
20 tion 204.

21 (B) Any pending medical malpractice claim  
22 which has been filed against the licensee.

23 (C) Any adverse judgment, settlement, or  
24 award against the licensee arising from a medi-  
25 cal malpractice claim.

1 (D) The licensee's voluntary surrender of a  
2 license or authorization to practice medicine in  
3 any jurisdiction (including military, public  
4 health, and foreign) or voluntary limitation on  
5 the scope of services which the licensee would  
6 otherwise be authorized to provide under the li-  
7 cense.

8 (E) Any denial to the licensee of a license  
9 or authorization to practice medicine by any ju-  
10 risdiction (including military, public health, and  
11 foreign).

12 (F) The licensee's removal from the medi-  
13 cal staff of any health care provider or limita-  
14 tion of staff privileges at such a provider  
15 (whether voluntary or involuntary), if such re-  
16 moval or limitation occurred while the licensee  
17 was under formal or informal investigation by  
18 the provider or a committee thereof for any rea-  
19 son related to possible medical incompetence,  
20 unprofessional conduct, or mental or physical  
21 inability to safely perform health care services.

22 (G) The licensee's resignation or with-  
23 drawal from a national, State, or county medi-  
24 cal society, association, or organization (wheth-  
25 er voluntary or involuntary) if that action oc-

1 curred while the licensee was under formal or  
2 informal investigation or review by that body  
3 for any reason related to possible medical in-  
4 competence, unprofessional conduct, or mental  
5 or physical inability to safely perform health  
6 care services.

7 (H) Whether the licensee has been treated  
8 for an alcohol or chemical substance problem  
9 during the 5-year period preceding the submis-  
10 sion of the report.

11 (I) Any denial or restriction of the licens-  
12 ee's privileges to prescribe controlled sub-  
13 stances.

14 (J) Whether the licensee has had any  
15 physical injury or disease or mental disability  
16 within the reregistration period which could  
17 reasonably be expected to affect the licensee's  
18 ability to safely perform health care services.

19 (K) The licensee's completion of continuing  
20 medical education or other forms of professional  
21 maintenance or evaluation, including specialty  
22 board certification or recertification, within the  
23 reregistration period, including participation in  
24 malpractice prevention programs required by a  
25 State medical board.

1 (L) Any loss or restriction of medical mal-  
2 practice insurance coverage in any jurisdiction  
3 (including military, public health and foreign).

4 (M) Any name change or change of home  
5 or professional address.

6 (N) In the case of a health care profes-  
7 sional, the information contained in the profes-  
8 sional's annual report made available to con-  
9 sumers under subsection (b)(2).

10 (2) REVIEW OF REPORTS SUBMITTED.—

11 (A) IN GENERAL.—The State medical  
12 board shall review the information reported by  
13 a licensee under paragraph (1) to determine  
14 whether reregistration of a medical license to  
15 the licensee is appropriate and whether an in-  
16 vestigation or disciplinary action should be initi-  
17 ated against the licensee.

18 (B) FALSE OR INCOMPLETE REPORTING.—  
19 A licensee who knowingly and willfully submits  
20 false or incomplete information on an applica-  
21 tion for license reregistration shall be subject to  
22 disciplinary action, including civil money pen-  
23 alties.

24 (b) ANNUAL REPORTS TO CONSUMERS.—

25 (1) HEALTH CARE PROVIDERS.—

1 (A) IN GENERAL.—Each health care pro-  
2 vider shall make an annual report (in such form  
3 and manner as the Secretary prescribes) avail-  
4 able free of charge to all health care consumers  
5 in the provider’s service area.

6 (B) CONTENTS OF REPORT.—The annual  
7 report referred to in subparagraph (A) shall in-  
8 clude—

9 (i) a list of all health services which  
10 the provider is licensed to offer;

11 (ii) a list of all routine preoperative  
12 and other medical tests frequently per-  
13 formed by the provider, together with the  
14 cost of such tests;

15 (iii) the number and types of quality  
16 of care complaints and medical malpractice  
17 actions claims decided or settled against  
18 the provider for the year, including the  
19 identity of all health care professionals  
20 named in the complaints and claims;

21 (iv) a list of the names and addresses  
22 of the members of the provider’s board of  
23 trustees (if any), the provider’s chief ad-  
24 ministrator, chief medical officer, and chief  
25 nursing administrator;

1 (v) the provider's accreditation status  
2 and any contingencies on accreditation,  
3 Medicare certification, or licensure and a  
4 description of all plans and current efforts  
5 to correct deficiencies resulting in any such  
6 contingencies; and

7 (vi) such other information as the  
8 Secretary may require.

9 (2) HEALTH CARE PROFESSIONALS.—

10 (A) IN GENERAL.—Each health care pro-  
11 fessional shall make an annual report (in such  
12 form and manner as the Secretary prescribes)  
13 available free of charge to all members of the  
14 public health care consumers in the profes-  
15 sional's service area.

16 (B) CONTENTS OF REPORT.—The report  
17 referred to in subparagraph (A) shall include—

18 (i) information regarding the profes-  
19 sional's education, experience, qualifica-  
20 tions, certification by a board recognized  
21 by the Board of American Medical Special-  
22 ties, and license to provide health care  
23 services, including a list of the States in  
24 which such professional is licensed and any  
25 limitations on such professional's licenses;

1 (ii) any disciplinary actions relating to  
2 the scope of the professional's practice  
3 taken against the professional by any  
4 health care provider, State medical board,  
5 the Federal Government, or medical ac-  
6 creditation or certification organization;

7 (iii) any quality of care complaints or  
8 medical malpractice claims decided or set-  
9 tled against the professional;

10 (iv) a disclosure of any ownership in-  
11 terest the professional may have in any  
12 health care provider, laboratory, or sup-  
13 plier of health care items; and

14 (v) such other information as the Sec-  
15 retary may require.

16 (3) RETROACTIVE REPORTING.—The initial an-  
17 nual report made under this subsection by a health  
18 care professional or provider shall include informa-  
19 tion for the 3 years prior to date the report is made.

20 (c) SPECIAL REQUIREMENTS FOR MEDICAL EXAMIN-  
21 ERS.—

22 (1) INITIAL REPORT ON DEATHS RESULTING  
23 FROM PROVIDER NEGLIGENCE.—Each medical ex-  
24 aminer shall file a report with the State medical  
25 board upon receiving information (based on findings

1       that were reached by or documented and approved  
2       by a board-certified or board-eligible pathologist) in-  
3       dicating that a death may be the result of a health  
4       care professional's or provider's negligence or incom-  
5       petence, and shall include in the report the name of  
6       the decedent, date and place of death, attending  
7       physician, and all other relevant information avail-  
8       able.

9               (2) AUTOPSY.—Not later than 90 days after fil-  
10       ing the report described in paragraph (1), a medical  
11       examiner shall file with the State medical board cop-  
12       ies of the medical examiner's report, autopsy proto-  
13       col, and all other relevant information available.

14       (d) SANCTIONS FOR FAILURE TO REPORT.—Any  
15       health care provider or professional who knowingly and  
16       willfully fails to comply with the reporting requirements  
17       of this section shall be subject, in addition to other pen-  
18       alties that may be prescribed by law, to a civil monetary  
19       penalty of not more than \$10,000 for each such failure.

20       **SEC. 303. REEXAMINATION REQUIRED AFTER 6 YEARS.**

21       (a) IN GENERAL.—Each State medical board shall  
22       require a health care professional licensed by the board  
23       to be reexamined every 6 years as a condition of licensure.

24       (b) CLINICAL PERFORMANCE EVALUATIONS FOR  
25       CERTAIN LICENSEES.—A State medical board may re-

1   quire a licensee to undergo a clinical performance evalua-  
2   tion as part of the licensee's reexamination under this sec-  
3   tion if—

4           (1) the licensee practices exclusively in a private  
5       office setting; or

6           (2) a medical malpractice claim has been filed  
7       against the licensee since the licensee's most recent  
8       reexamination.

9       (c) REVIEW OF PATIENT MEDICAL RECORDS.—In  
10   the case of a licensee described in subsection (b)(1), the  
11   State medical board may conduct a review of the medical  
12   records of the licensee's patients as part of the reexamina-  
13   tion under this section.

14   **SEC. 304. AUDITS.**

15       (a) PERFORMANCE AUDITS.—On a regular basis, a  
16   State medical board shall conduct audits of the office-  
17   based practices of licensees to assess performance and im-  
18   prove practices. In furtherance of this audit function,  
19   State medical boards shall be granted the authority to  
20   subpoena office-based and provider-based patient records.

21       (b) PHARMACY AUDITS.—On an annual basis, State  
22   medical boards shall conduct audits of a randomly selected  
23   sample of pharmacy records to detect illegal drug diversion  
24   and other misuse or overprescribing of controlled sub-  
25   stances.

1 **SEC. 305. MANDATORY MEDICAL MALPRACTICE INSUR-**  
2 **ANCE.**

3 A State medical board may not issue or renew the  
4 license of a health care professional or provider unless the  
5 professional or provider certifies that the professional or  
6 provider is covered under malpractice insurance in an  
7 amount determined by the Secretary.

8 **SEC. 306. STUDY OF MEDICAL NEGLIGENCE.**

9 (a) STUDY.—The Secretary shall conduct (either di-  
10 rectly or through contract) a national interdisciplinary  
11 study modeled on the Harvard Medical Practice Study to  
12 evaluate—

13 (1) the incidence of injuries regulating from  
14 medical interventions and the percentage of such in-  
15 juries that resulted from the negligence or fault of  
16 a health care professional or health care provider;

17 (2) appropriate measures of the costs of medi-  
18 cal expenses, lost wages, and lost household produc-  
19 tion to individuals who suffer medical injuries and  
20 their families, and the compensation provided for  
21 such losses under the current medical injury com-  
22 pensation system; and

23 (3) appropriate methods to prevent the occur-  
24 rence of medical negligence.

25 (b) ACCESS TO RECORDS.—The Secretary shall have  
26 the power to examine the medical records of patients of

1 a health care provider or health care professional (in a  
 2 manner that does not disclose the identity of, or identify-  
 3 ing information on, any individual patient) to the extent  
 4 necessary to conduct the study under subsection (a).

5 (c) REPORT.—Not later than 3 years after the date  
 6 of the enactment of this Act, the Secretary shall submit  
 7 a report to Congress on the study conducted under sub-  
 8 section (a).

## 9 **TITLE IV—PUBLIC ACCESS TO** 10 **PRACTITIONER DATA BANK**

### 11 **SEC. 401. PROVIDING PUBLIC ACCESS TO THE NATIONAL** 12 **PRACTITIONER DATA BANK.**

13 Section 427(a) of the Health Care Quality Improve-  
 14 ment Act of 1986 (42 U.S.C. 11137(a)) is amended—

15 (1) by redesignating subsections (b), (c), and  
 16 (d) as subsections (c), (d), and (e); and

17 (2) by inserting after subsection (a) the follow-  
 18 ing new subsection:

19 “(b) AVAILABILITY OF INFORMATION TO THE PUB-  
 20 LIC.—

21 “(1) IN GENERAL.—Not later than 30 days  
 22 after the date of the enactment of this subsection  
 23 and every 6 months thereafter, the Secretary shall  
 24 publish and make available to the public the follow-  
 25 ing information reported under this part:

1           “(A) Information reported under section  
2           421, except the following:

3                   “(i) The social security number of the  
4                   physician or practitioner.

5                   “(ii) Information disclosing the iden-  
6                   tity of the patient involved in such inci-  
7                   dent.

8           “(B) Information reported under section  
9           422(a).

10           “(C) Information reported under section  
11           423 (a) and (b).

12           “(2) DISSEMINATION.—The Secretary shall—

13                   “(A) disseminate the information described  
14                   in paragraph (1) to public libraries without  
15                   charge; and

16                   “(B) establish a 24-hour toll-free hotline  
17                   through which individuals may obtain such in-  
18                   formation.”.

○

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